

TITLE 14, NATURAL RESOURCES

NOTICE OF EMERGENCY RULEMAKING

ANNUAL FEE SCHEDULE

NOTICE IS HEREBY GIVEN that the State Mining and Geology Board (SMGB) adopted the regulations described below as an emergency action after considering all comments and recommendations regarding the proposed action during its public hearing on February 19, 2004, in Sacramento.

REGULATORY ACTION

The SMGB amended §3698 and §3699 of Article 8, California Code of Regulations (CCR), Title 14, Division 2, Chapter 8, Subchapter 1. These regulations clarify and make specific changes to the Annual Fee Schedule as a result of Legislative changes to Public Resources Code (PRC) §2207.

PUBLIC HEARINGS AND WRITTEN COMMENTS

The SMGB published on the Internet on January 23, 2004, its intent to adopt the subject regulations by the emergency method. On February 11, 2004, a SMGB Executive Officer's Report and text of the amended regulations were released to the public electronically and via the SMGB's mailing list. The regulations were adopted by the emergency method at the SMGB's public meeting on February 19, 2004.

AUTHORITY AND REFERENCE

The SMGB adopted by the emergency method the regulations that amended §3698 and §3699 to Article 8 of the California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, pursuant to its authority granted in PRC §2207(d). Reference: §2207(d).

INFORMATIVE DIGEST

The Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code Section 2710 et seq.) was enacted to ensure that significant adverse impacts of mining to the environment are prevented or mitigated and public health and safety are protected. Under SMARA, surface mining operators are required to submit to their respective lead agencies (cities and counties) for approval, a plan for reclaiming mined lands as well as proof of financial assurances to ensure those mined lands are reclaimed in accordance with the approved reclamation plan. Lead agencies are responsible for ensuring their surface mining operators are in compliance with SMARA's permit and reclamation requirements. The Department of Conservation (Department) and the State Mining and Geology Board (SMGB) provide SMARA lead agency assistance and oversight.

Public Resources Code (PRC) §2207 requires the SMGB to adopt regulations, by either emergency or non-emergency processes (reference PRC §2207[d][2][B]), that impose an annual reporting fee on each active and idle surface mining operation in the State. Active and Idle surface mining operations are defined in PRC §§ 2207(f), 2714, 2727.1, and 2735, and in the California Code of Regulations (CCR) § 3501, and include operations conducted by public agencies.

PRC § 2207(d)(2)(A) requires reporting fees to be established on an equitable basis reflecting the size and type of the operation. The SMGB must consider total assessed value of the operation, total acreage disturbed, and acreage subject to the reclamation plan. The SMGB is not restricted from considering other issues such as mineral production.

On October 10, 2003, the Governor signed Senate Bill (SB) 649 (Kuehl), that made changes to PRC §2207. These changes became effective on January 1, 2004. Specifically, the approved changes affect: (a) the minimum and maximum fees that can be assessed; (b) the maximum revenue that can be generated by the fees; and, (c) new fees to be assessed on the production of gold and silver in addition to the Annual Reporting Fees. These statutory changes require amendments to affected regulations under 14CCR §3698 (Fee Calculation), and § 3699 (Low Gross Exemption).

(a) Minimum and Maximum Reporting Fee Amounts – Existing statute sets the minimum annual fee amount at \$50, and the maximum annual fee amount at \$2,000. SB 649 resets these amounts at \$100 and \$4,000, respectively. These new amounts are to be adjusted annually for the cost of living as measured by the California Consumer Price Index for all urban consumers, using the percentage change in the previous calendar year, beginning with the 2005-06 fiscal year and annually thereafter.

(b) Maximum Revenue That Can Be Generated by Annual Reporting Fees: Existing statute established the maximum revenue that could be generated from Annual Reporting Fees at one million dollars, as adjusted for the cost of living beginning with the 1991-92 fiscal year. SB 649 resets this amount at \$3.5 million, as adjusted for the cost of living, beginning in the 2005-06 fiscal year.

(c) Annual Production Fee on Gold and Silver: SB 649 establishes a new fee imposed on the production of gold and silver mined within the State. This fee is in addition to the Annual Reporting Fee imposed on surface mines. Specifically, the statute provides that the SMGB shall collect five dollars (\$5) per (Troy) ounce of gold and ten cents (\$0.10) per (Troy) ounce of silver. Revenues collected from these sources shall be deposited into the Abandoned Mine Reclamation and Minerals Fund Subaccount, which was created within the Mine Reclamation Account.

FINDINGS OF THE SMGB:

1. Finding of Emergency Condition: The SMGB finds that the adoption of the proposed amended regulations requiring changes to 14CCR §§ 3698 and 3699, affecting: (a) the minimum and maximum Annual Report Fee amounts that can be assessed; (b) the maximum revenue that can be generated by the Annual Reporting Fees; and, (c) new fees to be assessed on the production of gold and silver in addition to the Annual Reporting Fee, is necessary for the immediate preservation of the public peace, health, safety, and general welfare. Without these changes, funding for the Department of Conservation's SMARA programs would not be available (Reference PRC §2207[d][2][B]).

2. Mandate on local agencies and school districts: The SMGB finds that the adoption of these regulations does not impose any new mandates on local agencies or on local school districts.

3. Costs or savings to any State agency: The SMGB finds that no savings or additional expenses to State agencies are identified.

4. Cost to any local agency or school district which must be reimbursed in accordance with Government Code §§ 17500 through 17630: The SMGB finds that the adoption of these regulations does not impose any additional cost obligations on local agencies or on local school districts.

5. Other non-discretionary costs or savings imposed upon local agencies: The SMGB finds that no other non-discretionary costs or savings to local agencies are imposed upon local agencies.

6. Cost or savings in Federal funding to the State: The SMGB finds that no costs or savings in Federal funding to the State are identified.

CONSIDERATION OF ALTERNATIVES:

1. **Make no regulatory changes:** Adopting this course of action would be in violation of statute (PRC §2207), that requires the SMGB to impose by regulation both an Annual Reporting Fee and a Production Fee on gold and silver. Existing affected regulations are not in accordance with the new statutes.

2. **Adoption of regulatory language through the non-emergency process:** It is the SMGB's intent to adopt the proposed regulatory changes through the standard, non-emergency rulemaking process. During the non-emergency process, the SMGB will entertain additional public, industry, and agency comments. However, the SMGB believes that the adoption of this proposed regulatory language by the emergency process is the only method available at this time to address the

statutory changes within an existing limited time frame. The fee schedule regulations must take effect by May 1, 2004, to ensure mining operators have sufficient time to file their Annual Reports by the July 1, 2004 deadline, and to provide funds for the Department of Conservation to operate the SMARA program.

CONFLICT WITH FEDERAL REGULATIONS

These regulations do not duplicate or conflict with existing Federal statutes or regulations. Also, by Memorandum of Understanding with the Federal Bureau of Land Management, the U. S. Forest Service, the Department of Conservation, and the State Mining and Geology Board, SMARA and Federal laws are coordinated to eliminate duplication.

CONTACT PERSON

Inquiries concerning the substance of the adopted regulations should be directed to:

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ADOPTED EMERGENCY REGULATION LANGUAGE:

(Added text is underlined; deleted text is ~~struck out~~)

§ 3698. Fees Calculation.

Annual reporting fees cited in these regulations shall be adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(a) The annual reporting fee for a multiple site surface mining operation shall be ~~two~~ four thousand dollars ~~(\$2000)-~~ (\$4,000).

(b) The annual reporting fee for surface mining operations which are no longer in operation with no intent to resume, which had no mineral production in the reporting calendar year, and

(1) Which did not complete reclamation during the reporting calendar year shall be ~~\$50~~ \$100; or

(2) Which completed reclamation during the reporting calendar year shall be ~~\$50~~ \$100. Proof of completion of reclamation, approved by the lead agency, shall be submitted with this fee.

(c) Except as otherwise provided, the annual reporting fee for surface mining operations shall be calculated on the total primary mineral commodity produced in the reporting calendar year. A factor to determine the amount of fee adjustments from one reporting calendar year to the next shall be calculated according to the following formula:

$$[(AT_{RY}) - (AT_{PY})]/(AT_{PY}) = \text{Factor}$$

Where: Adjusted Total (AT) equals the Amount Requested by the Director, less a projected amount from ~~fixed~~ fees set in CCR §3698 (a)(b)(d)(e) and CCR §3699, and less a projected amount from mine operations subject to the maximum fee amount of ~~\$2,000~~ \$4,000;

Where: AT_{RY} is the Adjusted Total for the current "Reporting Year"

Where: AT_{PY} is the Adjusted Total for the "Prior Year"

The new Fee Amount for each category is determined by the following formula (calculated amounts cannot be less than ~~\$50~~ \$100 or more than ~~\$2,000~~ \$4,000, as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter, and may be rounded to the nearest ~~\$5~~ \$1 (~~five dollars~~ one dollar):

Formula 1: Current Year Reporting Fee = Prior Year Reporting Fee times (1 + Factor) if Factor is positive;

Formula 2: Current Year Reporting Fee = Prior Year Reporting Fee times (1 - Factor) if Factor is negative.

(1) Operations where the primary mineral commodity produced is either aggregate products or industrial minerals shall be assessed a fee as follows:

Tons	Fee in Dollars
0 - 100	Formula 1 or 2 (not less than \$50 <u>\$100</u>)
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 50,000	Formula 1 or 2
>50,000 - 100,000	Formula 1 or 2
>100,000	2,000 <u>4,000</u>

(2) Operations where the primary mineral commodity produced is gold, silver, or precious metals shall be assessed a fee as follows:

Ounces	Fee in Dollars
0 - 1	Formula 1 or 2 (not less than \$50 <u>\$100</u>)
>1 - 10	Formula 1 or 2
>10 - 50	Formula 1 or 2
>50 - 150	Formula 1 or 2

>150 - 300 Formula 1 or 2

>300 ~~2,000~~ 4,000

(3) Operations where the primary mineral commodity produced is base metals or other metals shall be assessed a fee as follows:

Pounds	Fee in Dollars
0 - 10	Formula 1 or 2 (not less than \$50 <u>\$100</u>)
>10 - 100	Formula 1 or 2
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 20,000	Formula 1 or 2
>20,000	2,000 4,000

(d) The initial reporting fee for surface mining operations shall be five hundred dollars (\$500).

(e) The annual reporting fee for newly permitted surface mining operations which have not yet begun operations shall be fifty one hundred dollars (~~\$50~~). (\$100).

(f) In addition to the annual reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state during the reporting year.

NOTE: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

§ 3699. Low Gross Exemptions.

(a) For the calendar reporting year, a single operator or mining company may file with the Office of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and received by the Department of Conservation by July 1

following the calendar reporting year. The Department of Conservation shall grant the exemption if information submitted and confirmed by the annual report form and approved reclamation plan ~~or plans~~, clearly demonstrates that the operation meets the following criteria:

(1) material is extracted from one surface mining operation, and lead agency approval of a reclamation plan and financial assurance has been obtained; and

(2) all of the single operator or mining company's surface mining operation located in the State of California is tied to, or located on, one site; and

(3) the amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than \$100,000, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a completed and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant; and

(4) the owner or operator has submitted an annual reporting fee of ~~two~~ four hundred dollars ~~(\$200)~~ (\$400) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(b) For any request received on or before July 1 following the reporting calendar year the Department may afford the applicant one 30-day period in which to correct minor deficiencies in the application.

(c) If the Department of Conservation determines that an exemption is not warranted, the operator may appeal that determination to the Board. The appeal must be submitted in writing within fifteen (15) days of the denial of exemption notification by the Department of Conservation. The Chairman of the Board or his designee (Board Member), shall determine whether the Board has jurisdiction for the purposes of an appeal. In order for the Board to have jurisdiction the appeal must:

(1) Demonstrate the exemption request was complete and filed in a timely fashion;

(2) Specifically relate to the exemption criteria outlined in this Section; and

(3) Specify the appellant's arguments for granting the exemption.

(d) If the appeal is within the Board's jurisdiction, the Board, based on all the evidence in the record, may affirm the Department's decision or grant the exemption. If the operator does not appeal, the appeal is not within the Board's jurisdiction, or the Board affirms the Department's decision, the operator or owner shall submit an annual reporting fee calculated upon the total mineral commodity produced pursuant to Section 3698. Such fee shall be submitted within thirty (30) days of notification by the Department of Conservation or the Board. An operator or owner submitting an annual reporting fee later than thirty (30) days after notification shall be assessed a penalty and interest as provided in Public Resources Code Section 2207(d)(5).

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ADOPTED EMERGENCY REGULATION LANGUAGE (Clean Text):

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(b) The annual reporting fee for surface mining operations which are no longer in operation with no intent to resume, which had no mineral production in the reporting calendar year, and

(1) Which did not complete reclamation during the reporting calendar year shall be \$100; or

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>10,000 - 50,000	Formula 1 or 2
>50,000 - 100,000	Formula 1 or 2
>100,000	\$4,000

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>150 - 300	Formula 1 or 2
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>1,000 - 10,000	Formula 1 or 2
>10,000 - 20,000	Formula 1 or 2
>20,000	\$4,000

(d) The initial reporting fee for surface mining operations shall be five hundred dollars (\$500).

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exemption if information submitted and confirmed by the annual report form and approved reclamation plan, clearly demonstrates that the operation meets the following criteria:

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(4) the owner or operator has submitted an annual reporting fee of four hundred dollars (\$400) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

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